

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029**

IN THE MATTER OF

Alex C. Fergusson, LLC.
5121 Coffey Avenue
Chambersburg, PA 17201

Respondent

) **Stop Sale, Use or**
) **Removal Order**

) **DOCKET NO: FIFRA-03-2018-0117SS**

) **U.S. EPA-REGION 3-RHC**
) **FILED-13JUL2018pm3:17**

I. AUTHORITY

1. This Stop Sale, Use or Removal Order ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA"), 7 U.S.C. § 136k(a), which authorizes the Administrator of the EPA to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe on the basis of inspections or tests that the pesticide or device is in violation of any provision of FIFRA, the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA, or when the registration of the pesticide has been canceled by a final order or has been suspended. This authority was delegated to the Regional Administrator of EPA Region III on May 11, 1994 by Delegation No. 5-12, and was further redelegated within EPA Region III to the Director of the Land and Chemicals Division and to the Associate Director for the Office of Toxics and Pesticides in the Land and Chemicals Division on March 17, 2017.

2. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or suspended unless otherwise authorized by EPA under FIFRA.

3. Pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.

4. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term "pest" includes fungus, bacteria and "other microorganisms." The regulations implementing FIFRA give further guidance on what constitutes a pesticidal purpose, stating that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if, among other things, the person who distributes or sells the substance

“claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a pesticide.” 40 C.F.R. § 152.15(a)(1).

5. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), makes it unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration under Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

7. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as being “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

8. Pursuant to Section 2(p)(1) of FIFRA, 7 U.S.C § 136(p)(1), the term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or any of its containers or wrappers.

9. Pursuant to Section 2(p)(2) of FIFRA, 7 U.S.C § 136(p)(2), the term “labeling” means all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide or device.

10. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), the term “distribute or sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

II. BASIS FOR ORDER

11. Alex C. Fergusson, LLC (“AFCO” or “Respondent”) is a Commonwealth of Pennsylvania limited liability company headquartered at 5121 Coffey Avenue, Chambersburg, Pennsylvania, and is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

12. Respondent is and, at all times relevant to this Order, was the owner or operator of an establishment located at 800 Development Avenue, Chambersburg, Pennsylvania (the “Facility”).

13. On June 20, 2016, representatives of the EPA, duly authorized to conduct inspections under the authorities of Section 8 and Section 9 of FIFRA, 7 U.S.C. § 136f and § 136g, conducted an inspection at Respondent’s Facility.

14. As a result of the June 20, 2016 inspection and other information gathering activities, EPA collected information pertaining to the following twelve (12) products which have been and/or are being distributed or sold by Respondent with language on respective labels, letters of guarantee or technical data sheets accompanying the products, or webpages on Respondent's website, identified in parentheses:

- a. **0252 CHLORILIZER RTU** ("will reduce the number of bacteria on hard, non-porous surfaces");
- b. **AFCO 2547** ("can be used as . . . an antimicrobial intervention on dry floors", "specifically designed for use as an antimicrobial intervention on floors", "Dry application: For antimicrobial intervention, spread AFCO 2547 on floor. Completely cover the surface with the 2547 granules to a depth of 1/8-1/4 inch", "Floor Cleaner/Sanitizer");
- c. **2549 AFCO FCN** ("can be used as . . . an antimicrobial intervention on dry floors", "specifically designed for use as an antimicrobial intervention on floors", "Its[sic] deodorizes floors by eliminating the odor causing bacteria", "Dry application: For antimicrobial intervention, spread AFCO 2549 FCN on floor. Completely cover the surface with the 2549 granules to a depth of 1/8-1/4 inch");
- d. **AFCO 4347 DRAIN VIGIL RINGS** ("is intended for use in sewage and/or drain lines to control bacteria growth", "AFCO Drain Vigil Ring . . . is also recommended to control algae . . . in air conditioner condensate sumps", "Conditioners: Place Drain Vigil Ring in an area where the condensate will flow around the donut. The donut will slowly dissolve and release quat into the system, resulting in . . . algae prevention");
- e. **AFCO 4348 DRAIN VIGIL** ("is intended for use in sewage and/or drain lines to control bacteria growth", "AFCO Drain Vigil . . . is also recommended to control algae . . . in air conditioner condensate sumps", "Conditioners: Place Drain Vigil in an area where the condensate will flow around the block. The block will slowly dissolve and release quat into the system, resulting in . . . algae prevention");
- f. **AFCO 4409 BIOREM CD20** ("is a treatment specifically intended for the curative and preventative elimination of the biofilms. Recommended for open plant cleaning, used to complement of[sic] Enzyfoam, this single association of (2) products makes it possible to eliminate the biofilms and guarantee perfect hygiene", "prevent/eliminate/delay recurrence of biofilms");
- g. **AFCO 8086 BRIGADE FLC-41** ("contains powerful oxidizing agents known to kill harmful microorganisms", "For use as a floor cleaner/sanitizer to reduce biofilms, after normal cleaning and before sanitizing, apply a thin layer of Brigade over the floor surface, thoroughly wet the floor and scrub the solution into the

floor. Allow a contact time of 10-15 minutes. Rinse thoroughly with potable water and sanitize in the normal manner”);

- h. **AFCO 8110 QUAT RINGS** (“is intended for use as a controlled release antimicrobial agent for drains”, “are used in drains, condensate trays, troughs and drop pans and provide controlled release of antimicrobial agents to minimize germs in these areas of high microbial populations, thus improving the overall cleanliness of the plant environment”);
- i. **AFCO 9534 SWEET TREAT** (“is a concentrated liquid chill water treatment used to prevent scale, corrosion, and biofouling in ice bank and sweet water systems. AFCO 9534 Sweet Treat contain silica and other inhibitors combined with an antimicrobial agent for bio-control”);
- j. **AFCO 4410 MICRO-KLEEN L** (“can be accurately and easily controlled by the use of automatic dispensing and is effective in the removal of biofilm, proteinaceous soil, and fatty soils from membrane surfaces when used as part of an overall program”);
- k. **AFCO QX, EPA Reg. No. 833-10** (“can also be used to control odors in drains caused by an accumulation of biofilm and other organic contaminants. AFCO QX also helps remove biofilms and other organic matter which can plug drains or cause them to run slowly”); and
- l. **MYACIDE GA25, EPA Reg. No. 33753-26** (“Removes established biofilm and inhibits its re-growth”).

15. The language on respective labels, letters of guarantee or technical data sheets, or webpages on Respondent’s website identified in parentheses for each of the twelve (12) products identified in paragraphs 14.a. through 14.l., above, claim, state, or imply (by labeling or otherwise) that each of the twelve (12) products can or should be used as a pesticide.

16. Each of the twelve (12) products described in paragraphs 14.a. through 14.l., above, are a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.

17. The ten (10) products described in paragraphs 14.a. through 14.j., above, are not registered with EPA as pesticides nor have such products ever been so registered as pesticides with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

18. The two (2) products described in paragraphs 14.k. and 14.l., above, are each registered as a pesticide with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

19. The language on respective letters of guarantee, technical data sheets or webpages on Respondent’s website identified in parentheses for the pesticides described in paragraphs 14.k. and 14.l., above, are claims made as a part of their distribution or sale that substantially

differ from any claims made as part of statements required in connection with their registration under Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

20. The product described in paragraph 14.l., above, is registered to a company other than Respondent. The technical data sheet used by Respondent for the product described in paragraph 14.l., above, identifies the name of the product exclusively as AFCO 4342. The letters of guarantee and webpages on Respondent's website identify the name of the product as AFCO 4342 as well as its EPA registered name, MYACIDE GA25, EPA Reg. No. 33753-26.

21. By using the false or misleading brand name AFCO 4342 to identify the product, Respondent is causing MYACIDE GA25, EPA Reg. No. 33753-26 to be misbranded as defined by Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

22. Respondent owns, controls and/or has custody of the twelve (12) pesticidal products described in paragraphs 14.a. through 14.l., above, and has sold or distributed or intends to sell or distribute such pesticidal products to other persons in violation of Sections 12(a)(1)(A), 12(a)(1)(B) or 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A), (B) or (E).

III. ORDER

23. Pursuant to the authority of Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA hereby orders Respondent to stop the sale, use or removal of the twelve (12) products described in paragraphs 14.a. through 14.l., above, under its ownership, control or custody, wherever such products are located, except in accordance with the provisions of this Order or any subsequent modifications to this Order.

24. This Order shall pertain to all quantities (in all packaging types and sizes) of the twelve (12) products described in paragraphs 14.a. through 14.l., above, owned, controlled, or in the custody of Respondent or any parties acting as agents for Respondent wherever they may be located. The products covered by this Order shall not be distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment, received and (having been so received) delivered or offered for delivery, moved, used or removed for any reason, other than in accordance with the provisions of this Order or any such further order as may be issued by EPA in connection with the pesticide products identified in this Order.

25. Failure to comply with this Order is a violation of Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), which provides that it shall be unlawful for any person to violate any Order issued pursuant to Section 13 of FIFRA, 7 U.S.C. § 136k. Violation of the terms or provisions of this Order may subject Respondent and/or any responsible person to civil or criminal penalties as prescribed in Section 14 of FIFRA, 7 U.S.C. § 136l.

26. This Order shall take effect immediately upon receipt by Respondent, whereupon it will remain in effect unless and until revoked, terminated, suspended, or modified, in writing, by EPA.

27. Respondent may seek federal judicial review of the Order pursuant to Section 16 of FIFRA, 7 U.S.C. § 136n.

28. The issuance of this Order shall not act as a waiver by EPA of any enforcement or other authority available to EPA under FIFRA or any other federal statute.

29. For technical assistance regarding any matter addressed in this Order, or to arrange for a meeting or confer, please contact:

Courtenay Hoernemann
Pesticides and Asbestos Programs Branch (3LC42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: (215) 814-2216
Fax: (215) 814-3114
E-mail: Hoernemann.Courtenay@epa.gov

or

Christine Convery
Pesticides and Asbestos Programs Branch (3LC42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: (215) 814-2249
Fax: (215) 814-3114
E-mail: Convery.Christine@epa.gov

30. For questions regarding legal matters relating to this Order, you or your attorney may contact:

Louis F. Ramalho, Esq.
Office of Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: (215) 814-2681
Fax: (215) 814-2603
E-mail: Ramalho.Louis@epa.gov

or

Jennifer M. Abramson, Esq.
Office of Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: (215) 814-2066
Fax: (215) 814-2603
E-mail: Abramson.Jennifer@epa.gov

7.13.18

Date



John A. Armstead, Director
Land and Chemicals Division

Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2066